



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

February 23, 2009

Ordinance 16369

Proposed No. 2009-0077.2

Sponsors Dunn and Phillips

1 AN ORDINANCE regarding the King County fair;
2 authorizing the King County executive to execute an
3 interlocal agreement with the city of Enumclaw regarding
4 the King County fair; and amending Ordinance 11955,
5 Section 9, as amended, and K.C.C. 2.16.045 and repealing
6 Ordinance 12075, Section 5, as amended, and K.C.C.
7 2.32.040 and Ordinance 1128 (part), as amended, and
8 K.C.C. 2.32.050.

9

10 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

11 SECTION 1. Findings:

12 A. In 2002, the King County parks and recreation division of the department of
13 natural resources and parks faced significant financial challenges. That year, the division
14 faced a major fiscal crisis that required a nine million dollar reduction in the division's
15 2003 budget, a thirty-five percent cut. To address that crisis, the county convened the
16 metropolitan parks task force to make recommendations on ways to transition the parks
17 and recreation division to a more stable fiscal future.

18 B. The metropolitan parks task force recommended that the county transfer active
19 recreation facilities to cities and focus primarily on providing regional trails and natural
20 lands. Consistent with the metropolitan parks task force recommendations, all county
21 pools located within cities were transferred to those cities. In addition, the Enumclaw
22 golf course was transferred to the city.

23 C. The metropolitan parks task force found that: "The fiscal crisis facing the
24 County demands a much stricter approach to selecting what services the County will and
25 will not provide. The County parks system can no longer afford to be all things to all
26 people." As a result, the metropolitan parks task force concluded that the county must
27 "limit its involvement in providing local recreation services, particularly within cities."

28 D. The metropolitan parks task force further found that: "The provision of active
29 recreation services and programming must be fundamentally changed, moving away from
30 the County's operation of facilities and programs toward developing new partnerships and
31 finding alternative service providers that can meet public needs, but at less or no ongoing
32 taxpayer expense related to the maintenance of such facilities."

33 E. In January 2007, to support the city's efforts to develop a first-class equestrian
34 facility in the city and to reduce the county's ongoing expenses related to the King
35 County fairgrounds, the county transferred the fairgrounds to the city without charge in a
36 transaction that also provided the city with two million dollars in cash. In connection
37 with the transfer, the city and the county executed a ten year lease ("the lease"), which
38 permitted the county to hold the King County fair ("the fair") at the fairgrounds. The
39 former fairgrounds facility is now known as the Enumclaw exposition center. In 2007

40 and 2008, the county held the fair at the Enumclaw exposition center pursuant to the
41 lease.

42 F. The county operates the fair pursuant to chapter 36.37 RCW. The fair is a
43 long-standing event that provides important educational and recreational opportunities for
44 youth and generates significant revenue for the city and its businesses. However, with
45 the transition of the King County parks and recreation division away from the provision
46 of recreational programs, the fair is one of the last remaining recreation programs that the
47 county continues to operate.

48 G. The Enumclaw exposition center is the centerpiece of the city's efforts to
49 promote equestrian tourism in the city. The city is working to develop the Enumclaw
50 exposition center into a major equestrian facility to provide additional tourism revenue to
51 the city and its residents and businesses. Studies that the city has conducted have
52 indicated that the Enumclaw exposition center should serve as a multi-purpose facility
53 hosting other major events in addition to equestrian shows and competitions.

54 H. The county's continuing fiscal challenges have limited the county's ability to
55 devote resources to the fair. Despite declining attendance, the fair remains one of the
56 largest annual events at the Enumclaw exposition center.

57 I. The county faced another major fiscal crisis for 2009 with an estimated
58 revenue shortfall of more than ninety million dollars. This unprecedented shortfall
59 required reductions in services throughout county government. As a result, the King
60 County fair was not included in the county executive's proposed 2009 budget.

61 J. The county council restored the King County fair in the 2009 county budget
62 with "one-time" funding from a general fund transfer to the parks and recreation division.

63 However, without additional revenue, the county expects to face even greater shortfalls in
64 future years. In connection with the 2009 budget, the council also passed Motion 12889,
65 directing the county executive to appoint a task force to provide recommendations on
66 ways to make the fair sustainable.

67 K. Given future county financial projections, it does not appear that the county
68 can continue to produce the fair. However, the city has expressed an interest in
69 producing the fair in 2009 as a way to continue the fair in 2009 while the task force
70 recommendations are developed.

71 L. It is in the best interests of the public, the county, and the city for the fair to
72 continue at the Enumclaw exposition center, and the city has had significant success in
73 owning and operating the Enumclaw exposition center, including increased rentals and
74 facility enhancements.

75 M. RCW 36.37.040 authorizes the county council to employ "persons" to assist
76 in the management of fairs or to designate a nonprofit corporation as the exclusive
77 agency to operate and manage such fairs. Pursuant to RCW 1.16.080(1) and Article XI,
78 Section 10, of the Washington State Constitution, the city is a "person" and a not-for-
79 profit municipal corporation under state law.

80 N. RCW 36.01.010 authorizes the county to make any contracts as may be
81 necessary to the exercise of its corporate or administrative powers.

82 O. As a code city organized under Title 35A RCW, the city has all of the powers
83 and authority afforded a municipal corporation under Washington state law, including the
84 power to contract, the power to enter into interlocal agreements under chapter 39.34

85 RCW, and the power to operate recreational programs and facilities for benefit of the
86 public.

87 P. Article 1, Section 120, of the King County Charter authorizes the county, in
88 the exercise of its powers and the performance of its functions and services, to agree by
89 contract to participate jointly in or in cooperation with any one or more other
90 governments and to share the costs and responsibilities of such powers, functions and
91 services.

92 Q. The Interlocal Cooperation Act, chapter 39.34 RCW, authorizes local
93 governmental units to make the most efficient use of their powers by enabling them to
94 cooperate with other localities on a basis of mutual advantage and thereby to provide
95 services and facilities in a manner and pursuant to forms of governmental organization
96 that will accord best with geographic, economic, population and other factors influencing
97 the needs and development of local communities.

98 SECTION 2. The county executive is hereby authorized to execute an interlocal
99 agreement, substantially in the form of Attachment A to this ordinance, with the city of
100 Enumclaw regarding the King County fair.

101 SECTION 3. Ordinance 11955, Section 9, as amended, and K.C.C. 2.16.045 are
102 each hereby amended to read as follows:

103 A. The department of natural resources and parks is responsible to manage and
104 be fiscally accountable for the wastewater treatment division, water and land resources
105 division, solid waste division and parks and recreation division. The department shall
106 manage, design, develop, operate, maintain and enhance the geographic information
107 systems for the county and other contracting agencies. The department shall administer

108 and implement the requirements of the federal Clean Water Act, federal Endangered
109 Species Act and other federal and state laws and regulations related to those
110 requirements. The department shall perform the metropolitan water pollution abatement
111 function referred to in this section as "the water quality program," as set forth in chapter
112 35.58 RCW, K.C.C. Title 28 and other federal and state laws and regulations applicable
113 to that function, although financial planning for and administration of the water quality
114 program shall be conducted consistent with financial policies approved by the council.
115 The department shall coordinate the county's National Pollutant Discharge Elimination
116 System ("NPDES") municipal stormwater permit program. The department shall provide
117 the support to the county's participation in the regional water supply planning process
118 including the development of reclaimed water and the review of local utility district plans
119 for conformance with county plans and policies and shall participate in the process of
120 preparing coordinated water system plans to ensure conformance with county plans and
121 policies. The department shall provide for the active and passive recreational needs of
122 the region, consistent with the mission of the parks and recreation division described in
123 subsection E.1 of this section. The department shall designate as natural resource lands
124 those county-owned lands that serve important natural resource functions, including, but
125 not limited to, benefiting and protecting natural drainage systems, drainage basins, flood
126 control systems, ecosystems, water quality, ground water, fisheries and wildlife habitat
127 and other natural resource purposes. The department shall act to ensure integration of
128 environmental programs across utility and resource functions and to balance stewardship
129 with economic development issues. To ensure integration and balanced stewardship
130 through the director's office the department shall oversee strategic planning using staff

131 resources budgeted in the department's divisions. Strategic planning may include, but
132 not be limited to: integration of land and water resource protection; coordination of
133 groundwater, water reuse and water supply plan approval; development of new funding
134 approaches for resource protection; establishment of new partnerships with businesses,
135 community organizations and citizens; and better coordination of sewerage and flood
136 control facilities to prevent water quality degradation.

137 B.1. The duties of the waste water treatment division shall include the following:

138 a. administering the functions and programs related to the operation,
139 maintenance, construction, repair, replacement and improvement of the metropolitan
140 sewerage system and its financing;

141 b. administering the county's sewage disposal agreements with cities and
142 special districts;

143 c. providing planning for the water quality capital program;

144 d. providing design, engineering and construction management services related
145 to the water quality capital programs including new facilities development and
146 maintenance of the existing infrastructure;

147 e. providing support services such as project management, environmental
148 review, permit and right-of-way acquisitions, scheduling and project control; and

149 f. regulating industrial discharges into the metropolitan sewerage system.

150 2. The council may assign responsibility for services ancillary to and in support
151 of the operation and maintenance of the metropolitan water pollution abatement system
152 under chapter 35.58 RCW, including, but not limited to, human resources, accounting,

153 budgeting, finance, engineering, fleet administration, maintenance, laboratory,
154 monitoring, inspection and planning, as it determines appropriate.

155 C. The duties of the water and land resources division shall include the
156 following:

157 1. Proposing or updating, or both, and implementing adopted policies, plans and
158 programs relating to water and land resources, open space and other natural resources that
159 protect fisheries, natural resources, water quality and ground water and that solve and
160 prevent drainage problems;

161 2. Responding to major river floods and addressing drainage problems in
162 unincorporated portions of the county as provided in K.C.C. Title 9, the Surface Water
163 Management Program, in K.C.C. chapter 20.12, the King County Flood Hazard
164 Reduction Plan Policies and other policies established by the council;

165 3. Within available resources, maintaining major river channels, and surface and
166 storm drainage systems and lands to minimize flood hazards and protect fisheries
167 resources, drainage systems and lands, and water quality;

168 4. Providing coordination and technical assistance within the county and other
169 governments to assist in setting and implementing priorities for water and land resources,
170 including sample collection, laboratory services, monitoring, analysis and other activities
171 to protect, enhance and evaluate the quality of land, habitat and water resources in the
172 county;

173 5. Planning the surface water management capital program, providing design,
174 engineering and construction management services related to the surface water
175 management capital program including new facilities development and maintenance of

176 the existing infrastructure and providing support services such as project management,
177 environmental review, permit and right-of-way acquisitions, scheduling and project
178 control;

179 6. Preparing standards for storm water management facilities that are
180 constructed as part of land development;

181 7. Providing technical assistance and education to businesses and the general
182 public to encourage environmental stewardship;

183 8. Implementing the county park, open space, trails, agriculture, forestry, and
184 other natural resources acquisition programs, including planning, site selection,
185 financing, acquisition, project budget management and purchasing fee and less than fee
186 interests;

187 9. Monitoring and protecting the county's development rights interests related to
188 agricultural lands;

189 10. Consulting in the preparation of management plans for protection and use of
190 the natural resource values of county owned lands, including natural resource lands,
191 dedicated and deeded open space lands and lands acquired by the county as a condition of
192 land development approval, and consulting with the parks and recreation division the
193 appropriate means to execute such management plans;

194 11. The office of rural and resource lands shall be a distinct functional unit of
195 the division reporting directly to the water and land resources division manager. The
196 office shall plan, manage and be responsible for administering the county's rural and
197 resource lands programs including, but not limited to, agriculture, farmlands preservation,

198 current use taxation programs, forestry, noxious weeds, terrestrial wildlife and habitat,
199 rural economic development, and encouraging environmental stewardship; and

200 12. Planning, prioritizing, seeking funding for, designing and implementing
201 restoration projects on natural resource lands, dedicated and deeded open space lands and
202 lands acquired by the county as a condition of land development approval in coordination
203 with the parks and recreation division.

204 D. The duties of the solid waste division shall include the following:

205 1. Managing and operating the county's comprehensive solid waste program on
206 a self-supporting basis;

207 2. Administering the county's solid waste interlocal agreements with cities and
208 towns;

209 3. Diverting as much material as possible from disposal in a manner that
210 reduces the overall costs of solid waste management to county residents and businesses,
211 conserves resources, protects the environment and strengthens the county's economy;

212 4. Managing and being accountable for all transfer station operations and
213 landfills, as well as the transportation of waste between county facilities;

214 5. Procuring and maintaining all capital and operating equipment specific to the
215 solid waste function;

216 6. Providing planning, design, engineering and construction management
217 services related to the solid waste capital program including new facilities development
218 and maintenance of existing infrastructure;

219 7. Providing support services such as project management, environmental
220 review, permit acquisitions, scheduling and project control; and

221 8. Actively pursuing all revenue sources in an effort to maintain the lowest
222 possible rate structure for the benefit of county residents.

223 E. The duties of the parks and recreation division shall include the following:

224 1. Carrying out the county's parks and recreation division mission, which is to
225 provide regional trails, regional passive parks, regional resource and ecological lands and
226 regional active recreation facilities, rural parks and local unincorporated area parks within
227 the urban growth boundary until annexed, by employing entrepreneurial strategies that
228 raise revenues to support park operations and facilitating agreements with other
229 jurisdictions and entities to provide for recreational services and other activities;

230 2. Proposing and implementing adopted policies, plans and programs related to
231 the provision of regional and rural parks and recreation facilities and programs and
232 natural resource lands in King County and local parks in the unincorporated portion of
233 King County within the urban growth boundary until those areas are annexed;

234 3. Within available resources, managing, operating and maintaining or
235 facilitating the management, operation and maintenance of the county parks and
236 recreation facilities;

237 4. Within available resources, maintaining, restoring or facilitating the
238 maintenance of regional resource and ecological lands in consultation with the water and
239 land resources division;

240 5. Monitoring and protecting the county's real property and development rights
241 interests acquired through the conservation futures and other open space and natural
242 resource programs, with the exception of development rights on agricultural lands,

243 ensuring to the greatest extent practicable that subsequent county land use policies remain
244 compatible with the acquired interests;

245 6. Preparing and implementing in consultation with the water and land resources
246 division the management plans for protection and use of the natural resource values of
247 county owned lands, including natural resource lands, dedicated and deeded open space
248 lands and lands acquired by the county as a condition of land development approval, and
249 determining appropriate means to execute those management plans;

250 7. Administering, operating and maintaining those lands designated as natural
251 resource lands, using any work forces as appropriate;

252 8. Developing and maintaining an operational master plan and develop and
253 monitoring a capital improvement plan as defined in K.C.C. chapter 4.04;

254 9. Within available resources, developing and facilitating agreements for the
255 development of specific active park and recreation facilities;

256 10. Coordinating with other departments and divisions as appropriate in the
257 preparation of grant applications for park and open space acquisition, development and
258 operations;

259 11. Developing, managing, or facilitating agreements for the provision of
260 recreational programs; and

261 12. Facilitating programs that promote the safe enjoyment of county-owned
262 swimming pools and guarded swim beaches(~~(; and~~

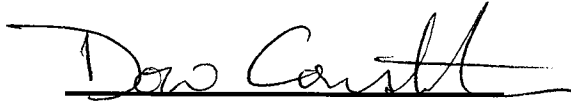
263 ~~13. Planning, organizing, scheduling and administering the annual King County~~
264 ~~fair)).~~

266 SECTION 4. Ordinance 12075, Section 5, as amended, and K.C.C. 2.32.040 and
267 Ordinance 1128 (part), as amended, and K.C.C. 2.32.050 are each hereby repealed.
268

Ordinance 16369 was introduced on 2/2/2009 and passed by the Metropolitan King County Council on 2/23/2009, by the following vote:

Yes: 8 - Mr. Constantine, Ms. Hague, Ms. Lambert, Mr. von Reichbauer, Mr. Gossett, Mr. Phillips, Ms. Patterson and Mr. Dunn
No: 0
Excused: 1 - Mr. Ferguson

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



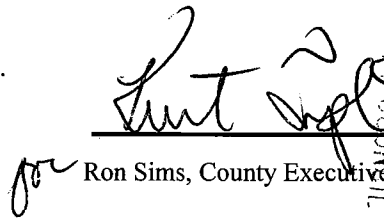
Dow Constantine, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 4th day of March, 2009.


Ron Sims, County Executive

RECEIVED
2009 MAR -5 AM 10:16
KING COUNTY CLERK
ANNE NORIS

Attachments A. Interlocal Agreement between King County and the City of Enumclaw regarding the King County Fair

**INTERLOCAL AGREEMENT BETWEEN
KING COUNTY AND
THE CITY OF ENUMCLAW
REGARDING THE KING COUNTY FAIR**

This Interlocal Agreement is made on this ___ day of _____, 2009, by and between the City of Enumclaw ("City"), a code city with a mayor-council form of government, organized under RCW Title 35A; and King County ("County"), a home rule charter county and political subdivision of the State of Washington.

BACKGROUND

1. In 2002, the King County Parks and Recreation Division ("Division") faced significant financial challenges. That year, the Division faced a major fiscal crisis that required a reduction in the Division's 2003 budget of approximately \$9 million, a 35 percent cut. To address that crisis, the County convened the Metropolitan Parks Task Force to make recommendations on ways to transition the Division to a more stable fiscal future.
2. The Metropolitan Parks Task Force recommended that the County transfer active recreation facilities to cities and focus primarily on providing regional trails and natural lands. Consistent with the Metropolitan Parks Task Force recommendations, all County pools located within cities were transferred to those cities. In addition, the Enumclaw Golf Course was transferred to the City.
3. The Metropolitan Parks Task Force found that: "The fiscal crisis facing the County demands a much stricter approach to selecting what services the County will and will not provide. The County parks system can no longer afford to be all things to all people." As a result the Metropolitan Parks Task Force concluded that the County must "limit its involvement in providing local recreation services, particularly within cities."
4. The Metropolitan Parks Task Force further found that: "The provision of active recreation services and programming must be fundamentally changed, moving away from the County's operation of facilities and programs toward developing new partnerships and finding alternative service providers that can meet public needs, but at less or no ongoing taxpayer expense related to the maintenance of such facilities." (Emphasis in original.)
5. In January of 2007, to support the City's efforts to develop a first-class equestrian facility in the City and to reduce the County's ongoing expenses related to the King County Fairgrounds, the County transferred the Fairgrounds to the City without charge in a transaction that also provided the City with \$2 million in cash. In connection with the transfer, the City and the County executed a 10-year lease ("the Lease") which permitted the County to hold the King County Fair ("Fair") at the Fairgrounds. The former Fairgrounds facility is now known as the Enumclaw Exposition Center. In 2007 and 2008, the County held the Fair at the Enumclaw Exposition Center pursuant to the Lease.

6. The County operates the Fair pursuant to chapter 36.37 RCW. The Fair provides important educational and recreational opportunities for youth and generates significant revenue for the City and its businesses. However, with the transition of the Division away from the provision of recreational programs, the Fair is one of the last remaining recreation programs that the County continues to operate.
7. The Enumclaw Exposition Center is the centerpiece of the City's efforts to promote equestrian tourism in the City. The City is working to develop the Enumclaw Exposition Center into a major equestrian facility to provide additional tourism revenue to the City and its residents and businesses. Studies that the City has conducted have indicated that the Enumclaw Exposition Center should serve as a multi-purpose facility hosting other major events in addition to equestrian shows and competitions.
8. The County's continuing fiscal challenges have limited the resources the County can contribute to the Fair. Despite declining attendance, the Fair remains one of the largest annual events at the Enumclaw Exposition Center.
9. The County faced another major fiscal crisis for 2009 with an estimated revenue shortfall of more than \$90 million. This unprecedented shortfall required reductions in services throughout County government. As a result, the King County Fair was not included in the King County Executive's proposed 2009 budget.
10. The King County Council restored the King County Fair in the 2009 County budget with "one-time" funding. However, without additional revenue, the County expects to face even greater shortfalls in future years. As part of the 2009 budget, the Council also directed the County Executive to appoint a task force to provide recommendations on ways to make the Fair sustainable.
11. Given future County financial projections, it does not appear that the County can continue to produce the Fair. However, the City has expressed an interest in producing the Fair in 2009 as a way to continue the Fair in 2009, while the task force recommendations are developed.
12. It is in the best interests of the public, the County, and the City for the Fair to continue at the Enumclaw Exposition Center, and the City has had significant success in operating the Enumclaw Exposition Center, including increased rentals and facility enhancements.
13. In RCW 36.37.040, state law authorizes the County Council to employ "persons" to assist in the management of fairs or to designate a nonprofit corporation as the exclusive agency to operate and manage such fairs. Pursuant to RCW 1.16.080(1) and Wash. Const. Art. XI §10, the City is a "person" and a not-for-profit municipal corporation under state law.
14. In RCW 36.01.010, state statute authorizes the County to make such contracts as may be necessary to the exercise of its corporate or administrative powers.

15. As a code city organized under RCW Title 35A, the City has all of the powers and authority afforded a municipal corporation under Washington State law, including the power to contract, the power to enter into interlocal agreements under RCW Chapter 39.34, and the power to operate recreational programs and facilities for benefit of the public.
16. King County Charter ("the Charter") Article 1, Section 120, authorizes the County, in the exercise of its powers and the performance of its functions and services, to agree by contract to participate jointly in or in cooperation with any one or more other governments, and to share the costs and responsibilities of such powers, functions, and services.
17. The Interlocal Cooperation Act, Chapter 39.34 RCW, authorizes local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.
18. Pursuant to and consistent with RCW Chapter 39.34, RCW Chapter 36.37, RCW Title 35A, the Charter, and the Code, the County and the City agree that the Lease is terminated, and that the City will operate, conduct and manage the King County Fair at the Enumclaw Exposition Center in 2009, subject to and consistent with the following terms and conditions:

TERMS AND CONDITIONS

1.0 County's Rights and Responsibilities.

- 1.1 Funding Amount and Purpose. The County will pay the City three hundred eleven thousand two hundred and three dollars (\$311,203.00) from appropriated funds in the County's Parks and Recreation Division Budget, Project No. 460294 to be used solely for the purpose of supporting the City's management, maintenance, repairs, and production of the Fair at the Enumclaw Exposition Center in 2009.
- 1.2 Timing of Payment. The County will pay to the City a lump sum payment of three hundred eleven thousand two hundred and three dollars (\$311,203.00) within thirty (30) days of the date that the City and County have executed this Agreement.
- 1.3 Method of Payment. The County shall make the payment to the City in accordance with instructions from the City.
- 1.4 County Leasehold Interest in Exposition Center Terminated. The City and the County agree that effective upon the date that the City executes this Agreement, that certain Lease, styled as the "Lease Agreement Between the City of Enumclaw and King County," and dated December 12, 2006, is hereby terminated, consistent with and pursuant to Section 8.2 of the Lease and this Section 1.4.

- 1.5 City to Retain State Funding. The parties acknowledge that in prior years, the State of Washington has contributed approximately thirty seven thousand dollars (\$37,000) towards the annual operation and management of the King County Fair. The County agrees that in any year in which the City manages and operates the Fair, the City may receive and keep any such contribution(s) by the State of Washington. The City shall prepare and submit any necessary documentation to the State in connection with the State funding.
- 1.6 County Staff Support. Upon request, within reason, and subject to budget limitations, including furloughs, during the term of this Agreement the County will make its staff available during regular business hours to consult with the City regarding Fair operations and practices.
- 1.7 County to Provide Administrative Materials Without Charge. Within sixty (60) days of the date that the City executes this Agreement, and to the extent permitted by law or preexisting contractual obligations, the County will provide to the City all files and templates, vendor and employee lists, marketing materials, and other administrative materials relating to the Fair, which shall become the property of the City. PROVIDED, that nothing in this Section 1.7 shall require the County to breach, terminate, or otherwise violate any software agreements or other intellectual property licenses that it may hold in connection with Fair-related administrative materials.
- 1.8 Fair-related Personal Property and Logo/Slogan License. Within sixty (60) days after the date that the City executes this Agreement, the County may execute a Bill of Sale to transfer to the City all personal property owned by the County and used primarily or exclusively for the Fair. Such property shall be transferred without charge and free and clear of all liens and encumbrances; and such property shall become the property of the City. In addition, for the term of this Agreement, the County hereby grants to the City a non-exclusive license to use the phrase "King County Fair" and the King County Fair logo.
- 2.0 City's Rights and Responsibilities.** In exchange for the payment from the State of Washington and the County's financial support for the Fair and other duties outlined in Article 1 of this Agreement, the City shall have the following rights and responsibilities.
- 2.1 Fair Management and Production. During the term of this Agreement, the City shall have the sole and exclusive right, duty and obligation to manage and produce the Fair, consistent with this Agreement. As such, the City shall be entitled to make all decisions regarding the management and operation of the Fair, including, without limitation, the selection of any theme, time of year, vendors, concessionaires, entertainment, and all other aspects of the Fair. Notwithstanding the foregoing, the City shall provide suitable competitions for 4-H and Future Farmers of America ("FFA"), sufficient to allow 4-H and FFA participants to compete in State competitions at the Puyallup Fair. In addition, the City and its vendors, contractors and subcontractors shall refer to the Fair as "The King County Fair – produced by the City of Enumclaw" in all public communications, including marketing materials.

- 2.2. Public Access. The City agrees that the Fair shall be open to the public and operated to provide recreation and education opportunities. PROVIDED, that nothing in this Section 2.2 is intended to preclude the City from charging a reasonable admission fee for the Fair or for entertainment or special events or services in conjunction with the Fair, all pursuant to Section 2.4.
- 2.3. County Resident Access. The City covenants that it will not limit or restrict access to or use of the Fair by County residents in any way that does not also apply to City residents.
- 2.4. Fair Revenue and Expenditures. The City shall set all charges or fees that are imposed to recover Fair expenses, including without limitation, fees from attendees, vendors, sponsors, concessionaires, and others. As between the City and the County, the City shall be solely and fully responsible for any and all Fair-related expenses, and therefore the City shall retain all revenues collected from or in connection with the Fair. Consistent with this Agreement, any profit attributable to the Fair, including payments from the County or the State addressed under Article 1 of this Agreement, shall be the sole property of the City.
- 2.5. Vendor and Concessionaire Contracts. Subject to Section 4.1.5 of this Agreement, the City shall negotiate and enter into all contracts, licenses, or other agreements related to the Fair in the name of the City, including without limitation, contracts with vendors, sponsors, concessionaires, carnival operators, and other contracts related to the Fair. The County shall provide the City with copies of applicable contracts.
- 2.6. Safety. As between the City and the County, the City shall have the sole right and obligation to provide security and emergency medical aid forces for, during, and in connection with the Fair.
- 3.0 Insurance.**
- 3.1. Insurance Requirements. As of the date the City executes this Agreement, the City must have insurance coverage in place in the amounts and the form specified in this Article 3.
- 3.2. Scope of Insurance. The City's minimum insurance coverage shall be at least as broad as:
- 3.2.1. Insurance Services Office form number CG-00-01 (Ed. 11-88 or a more recent edition) covering commercial general liability;
 - 3.2.2. Insurance Services Office form number CA-00-01 (ED. 12-90 or a more recent edition), covering automobile liability symbol (1), any auto; and
 - 3.2.3. Industrial insurance as required by applicable federal, state, and local laws, and stop gap or employer's liability insurance.

- 3.3. Minimum Insurance Limits. The City shall obtain policies for the following initial minimum insurance limits:
- 3.3.1. Commercial General Liability: \$1,000,000.00 combined single limit per occurrence for bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$2,000,000.00 aggregate limit;
- 3.3.2. Automobile Liability: \$1,000,000.00 combined single limit per accident for bodily injury and property damage; and
- 3.3.3. Statutory Workers Compensation and Stop Gap or Employer's Liability: \$1,000,000.00.
- 3.3.4. Liquor Legal: If Liquor is to be sold or served at the Fair, then One Million Dollars (\$1,000,000) per Occurrence and in the Aggregate is required.
- 3.4. Deductibles and Self-insured Retentions. Any deductibles or self-insured retentions must be declared to the County. The deductible and/or self-insured retentions of the policies shall not, in any way, limit or apply to the City's liability to the County and shall be the sole responsibility of the City.
- 3.5. Reserved.
- 3.6. Acceptability of Insurers. The City's selection of insurance carriers to provide insurance under this Agreement is subject to the approval of the County.
- 3.7. Verification of Coverage. Upon request, the City shall furnish the County with certificates of insurance and endorsements required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City hereby warrants that its insurance policies satisfy the requirements of this Agreement.
- 3.8. Self-Insurance. If the City is self-insured for any of the insurance requirements specified in this Article 3, then the City shall provide a certificate of self-insurance to the County when the City executes this Agreement. The certificate will be attached to this Agreement as Exhibit A and incorporated into this Agreement by this reference.
- 3.9. Mutual Release and Waiver. To the extent a property damage loss is covered by insurance in force, the County and the City hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under applicable insurance policies, to the extent loss is paid; PROVIDED, that this Section 3.9 shall be inapplicable if it would have the effect of invalidating any insurance coverage of the County or the City.

- 3.10 City to Assess Own Risks. By requiring such minimum insurance as specified herein, neither party is deemed to, or construed to, have assessed the risks that may be applicable to the other party to this Agreement. The City will assess its own risks and, if it deems appropriate or prudent, or both, maintain greater limits or broader coverage.
- 3.11 Survival of City's Insurance Duties. The City's duties and obligations under this Article 3 shall survive the expiration or earlier termination of this Agreement.

4.0 Indemnification.

- 4.1 Scope of Indemnification. The City, on behalf of itself, its successors, and assigns, agrees to defend, indemnify, and hold harmless King County, its appointed and elected officials, and employees, from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to any use of or occurrence on, in, or at the Fair or in connection with the Fair. The City's obligations under this Article 4 include, but are not limited to:
- 4.1.1. The duty to promptly accept tender of defense and provide defense to the County at the City's own expense;
- 4.1.2. Indemnification of claims made by the City's employees, contractors, or agents; and
- 4.1.3 Waiver of the City's immunity under the industrial insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify King County, which waiver has been expressly and specifically negotiated by mutual agreement of the parties.
- 4.1.4 If the County incurs any judgment, award and/or cost arising from this Agreement, including attorneys' fees to enforce the provisions of this article, then all such fees, expenses, and costs shall be recoverable from the City.
- 4.1.5 A hold harmless provision to protect the County similar to this provision shall be included in all contracts or subcontracts entered into by the City in conjunction with the Fair.
- 4.2 Applicability of RCW 4.24.115. If RCW 4.24.115 applies to this Agreement, then the City agrees to protect, defend, indemnify and save the County, its officers, officials, employees and agents from any and all claims, demands, suits, penalties, losses damages judgments, or costs of any kind whatsoever for bodily injury to persons or damage to property (hereinafter "claims"), arising out of or in any way resulting from the City's officers, employees or agents, acts or omissions, performance or failure to perform the rights and privileges granted under this Agreement, to the maximum extent permitted by law or as defined by RCW 4.24.115, now enacted or as hereafter amended.

4.3 Environmental Hazards.

- 4.3.1. The City hereby agrees to indemnify, defend, and hold harmless, and to waive, release and discharge the County from any and all present or future claims or demands, and any and all damages, Losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation, fines, penalties or judgments, and attorneys' fees) of any and every kind or character, known or unknown, which the City might have asserted or alleged against the County arising from or in any way related to the alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on, or at the Enumclaw Exposition Center or in connection with the Fair. In addition, the City shall indemnify, defend and hold the County harmless from and against any Losses arising out of or related to (i) any exacerbation of any condition of the Enumclaw Exposition Center by or through the Fair, and (ii) the cost of any cleanup of the Enumclaw Exposition Center. PROVIDED, however, that nothing in this subsection 4.3.1 is intended to cover Hazardous Substances in existence at the Enumclaw Exposition Center property prior to January 2, 2007 ("pre-transfer Hazardous Substances"). Liability for pre-transfer Hazardous Substances is covered exclusively under the agreement styled, Intergovernmental Land Transfer Agreement Between King County and the City of Enumclaw dated October 23, 2006 and recorded under King County recording number 20070102001341.
- 4.3.2. The term "Losses" shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances; (b) Losses for injury or death of any person; and (c) Losses arising under any later-enacted Environmental Law. The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law. The term "Hazardous Substance" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended, and includes without limitation petroleum oil and any of its fractions.
- 4.4. Survival of the City's Indemnification Covenants, Obligations and Duties. The City understands, acknowledges and agrees that its covenants, obligations and duties under this Article 4 shall survive the expiration or earlier termination of this Agreement.

5.0 General Terms and Conditions.

- 5.1 Term. The term of this Agreement shall commence upon its execution by both parties and shall expire at midnight on December 31, 2009.
- 5.2 Ownership. Any fixtures or improvements installed at the Enumclaw Exposition Center under this Agreement will become the property of the City.
- 5.3 Maintenance and Operation. The City owns and operates the Enumclaw Exposition Center and provides routine maintenance and repairs there. The County shall not operate the Enumclaw Exposition Center, and shall provide no maintenance or repairs of any kind.
- 5.4 Utilities and Service. The City shall provide for all utilities and services to maintain the Enumclaw Exposition Center in a safe condition and to meet its rights and obligations under this Agreement.
- 5.5 Records, Inspections, and Audits. The City will keep such full and detailed accounts as may be necessary for proper financial management under this Agreement.
- 5.6 Assignment. The parties shall not transfer or assign this Agreement or any part thereof without express written permission from the other party. This prohibition against transferring or assigning shall include any transfer or assignment by operation of law.
- 5.7 Severability. If any term of this Agreement is held invalid or unenforceable, the remainder of the Agreement will not be affected but shall continue in full force.
- 5.8 Termination. This Agreement may only be terminated upon written mutual agreement between the parties hereto. PROVIDED, that if the parties mutually agree to terminate this Agreement before the end of the Fair in any year, or if the City otherwise fails to produce the Fair during the term or any renewal thereof, then the City shall return to the County all funds paid by the County to the City in relation to that year's Fair, as well as all funds paid to the City by the State of Washington in relation to such Fair.
- 5.9 Non-waiver. Failure of the parties to insist upon the strict performance of any term of this Agreement will not constitute a waiver or relinquishment of any party's right to thereafter enforce such term.
- 5.10 Integration. This writing contains all terms of this Agreement. It replaces all negotiations and agreements between the parties with respect to the subject matter hereof.
- 5.11 No Partnership. Neither of the parties through this Agreement in any way or for any purpose becomes a partner or joint venture of the other in the conduct of their respective business or otherwise.

- 5.12 Compliance with Laws and Regulations. The City shall comply fully with all federal, state, county and city statutes, ordinances and regulations now or hereafter in force and applicable to the Enumclaw Exposition Center, the Fair, or either of them, including, to the extent applicable, those related to “public works,” payment of prevailing wages, and competitive bidding of contracts.
- 5.13 Representatives. The City and the County shall each identify to the other, in writing, a designee authorized to conduct day-to-day communications relating to this Agreement.

The County's designated representative for this agreement is:

Tom Koney
Assistant Division Director
King County Parks and Recreation Division
Mail Stop – KSC-NR-0700
201 South Jackson Street, Suite 700
Seattle, WA 98104-3855
206.263.6229
thomas.koney@kingcounty.gov

The City's designated representative for this Agreement is:

Larry Fetter
Parks and Recreation Director
c/o Enumclaw City Hall
1339 Griffin Avenue
Enumclaw, WA 98022
360.802.0236
larryfetter@ci.enumclaw.wa.us

- 5.14 Dispute Resolution. In the event any dispute regarding this Agreement cannot be resolved by informal methods, then prior to commencing litigation or taking any administrative action, the aggrieved party shall notify the other in writing of the particulars of the grievance, and the other party shall reply in writing within ten (10) working days, setting forth its position and stating what, if any, action it will take with respect to the grievance. The aggrieved party shall respond in writing, indicating its satisfaction or dissatisfaction, as the case may be; in the event the aggrieved party is dissatisfied, the parties shall then meet in person and confer in good faith to resolve their differences before litigation is commenced. PROVIDED, that if a dispute arises during the fourteen (14)-day period immediately prior to the Fair, or during the Fair itself, then the parties shall use all reasonable methods to resolve the dispute as quickly as possible, in order that the Fair be conducted and completed on time and in a satisfactory manner.

- 5.15 Notice. All notices under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, postage prepaid, or by facsimile, or by private overnight courier to the City and to the County at their respective addresses set forth below or such other addresses as may from time to time be designated by any such party in writing. Notices mailed as provided in this Section 5.15 shall be deemed given and received on the date that is three (3) business days following the date of post mark, in the case of mailing, or the date of transmission confirmation by the sender's facsimile machine, in the case of facsimile transmission, or one (1) day after deposit with a private overnight courier.

CITY OF ENUMCLAW

Mark Bauer
City Administrator
City of Enumclaw
1339 Griffin Avenue
Enumclaw, WA 98022
360.802.6281
MarkBauer@ci.enumclaw.wa.us

KING COUNTY

Kevin Brown, Director
King County Parks and Recreation Division
201 S. Jackson St, Ste 700
Seattle, WA 98104-3855
206-296-8631
kevin.brown@kingcounty.gov

A party may change its address for purposes of receiving notices by giving notice of such change to the addresses identified above.

- 5.16 No Third Party Rights. Nothing in this Agreement shall create any right, duty, or cause of action in any third party.
- 5.17 Choice of Law; Venue. This Agreement shall be governed by the law of the State of Washington. Any litigation between the parties in connection with this Agreement shall be heard in the Superior Court in and for King County, Washington.
- 5.18. Police Powers Not Affected. Nothing in this Agreement shall affect, or be construed to affect, the governmental or police powers of the City of Enumclaw or of King County.
- 5.19. Headings Not Material. The article and section headings contained herein are only for convenience and reference and are not intended to be a part of this Agreement or in any manner to define, limit, or describe the scope or intent of this Agreement or the particular articles or sections to which they refer.

- 5.20 Neutral Authorship. Each party has been represented by counsel in connection with the negotiation, execution and delivery of this Agreement and its Attachments. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Agreement or its Attachments.
- 5.21 Amendments and Task Force Recommendations. No provision of this Agreement may be amended or modified except by written agreement signed by both parties. The parties acknowledge the pending formation of a task force to make recommendations on Fair operations and may determine to amend this Agreement based on those recommendations.
- 5.22 Authority. Each individual executing this Agreement on behalf of the City or the County represents and warrants that he or she is duly authorized to execute and deliver the Agreement on behalf of the City or the County.
- 5.23 Recording. Immediately after both parties have executed this Agreement, the County shall cause it to be recorded or, alternatively, listed by subject on the County's web site or other electronically retrievable public source, all pursuant to RCW 39.34.040.

16369


CITY OF ENUMCLAW:

Signature – John Wise, Mayor

Date

Approved as to Form:
CITY ATTORNEY

KING COUNTY:

for 

Signature – Ron Sims, King County
Executive

3/4/09

Date

Approved as to Form:
OFFICE OF THE KING COUNTY
PROSECUTING ATTORNEY

Exhibits:

- A. City's Self-Insurance Certificate (if applicable)

RECEIVED
2009 MAR -5 AM 10: 02
CLERK
KING COUNTY COUNCIL